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10 Attorney for Defendants CITY OF BURBANK,  
11 BURBANK POLICE DEPARTMENT,  
12 BURBANK POLICE OFFICERS ADAM  
13 BAUMGARTEN AND MICHAEL EDWARDS



11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 PRESTON SMITH, an individual;  
14

15 Plaintiff,  
16

17 v.  
18

19 CITY OF BURBANK, BURBANK  
20 POLICE DEPARTMENT, BURBANK  
21 POLICE DEPARTMENT OFFICER  
22 GUNN; BURBANK POLICE  
23 DEPARTMENT OFFICER  
24 BAUMGARTEN; BURBANK  
25 POLICE DEPARTMENT OFFICER  
26 EDWARDS; AND DOES 1  
27 THROUGH 100, INCLUSIVE  
28

Defendant.

Case No.

CV10-8840

VBF  
ACERX

NOTICE OF REMOVAL

**TO THE CLERK OF THE ABOVE ENTITLED COURT:**

**PLEASE TAKE NOTICE** that Defendants City of Burbank, Burbank Police Department, and Officers Baumgarten and Edwards respectfully submit this Notice of Removal of this action from the Superior Court of the State of California in and for the County of Los Angeles, Central District, in which court the action is pending, to the United States District Court for the Central District of California. In support of this Notice of Removal, the defendants state the following:

1. On or about September 22, 2010, an action was commenced against the City of Burbank, Burbank Police Department, Officers Baumgarten and Edwards in the Superior Court of the State of California in and for the County of Los Angeles, entitled *Preston Smith v. City of Burbank et al*, Case. No. BC446016. On October 18, 2010 the City of Burbank and Burbank Police Department were served with the Complaint. On October 21, 2010 Officers Neil Gunn, Jr., Adam Baumgarten and Micheal Edwards were served with the Complaint.

2. In the Complaint, plaintiff Preston Smith alleges a Civil Rights Violation, 42 USC § 1983, among other claims.

3. This action is a civil proceeding over which this Court has federal question jurisdiction, pursuant to 28 USC Section 1441 (b). Both the title of the Third Amended Complaint and paragraphs 8 and 11 of the Third Amended Complaint purport to allege a cause of action under 42 USC § 1983.

4. On October 18, 2010, the Defendants first obtained notice of this federal action when it was served with a copy of the Complaint. Attached hereto and incorporated herein by reference is a true and correct copy of the Complaint.

5. No other defendants have been named other than the City of Burbank, Burbank Police Department, and Officers Gunn, Baumgarten and Edwards.

6. A true and correct copy of this Notice of Removal is being filed this date with the clerk of the Superior Court of the State of California in and for the

1 County of Los Angeles and served this date upon the plaintiff as required by 28  
2 USC § 1446 (d).

3 WHEREFORE, the above-referenced action now pending in the Superior  
4 Court of the State of California in and for the County of Los Angeles, Case No.  
5 BC446016, is removed from the state court to this Court.

6 DATED: November 17, 2010

7 Respectfully submitted,

8 DENNIS A. BARLOW  
9 City Attorney

10 By: 

11 CAROL A. HUMISTON  
12 Sr. Assistant City Attorney  
13 Attorney for Defendant CITY OF  
14 BURBANK BURBANK POLICE  
15 DEPARTMENT, BURBANK  
16 POLICE OFFICERS ADAM  
17 BAUMGARTEN AND MICHAEL  
18 EDWARDS  
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Exhibit A



Manuel H. Miller, SBN 36947  
Max A. Sauler, Esq. SBN 62634  
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CITY ATTORNEY

2010 OCT 19 PM 1:15

CONFORMED COPY  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles  
SEP 22 2010

John A. Clarke, Executive Officer  
By RUGENA L. BRY Deputy

Attorney for Plaintiff Preston Smith

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

BC446016

PRESTON SMITH, an individual;

Plaintiff,

vs.

CITY OF BURBANK; BURBANK POLICE  
DEPARTMENT; BURBANK POLICE  
DEPARTMENT OFFICER GUNN;  
BURBANK POLICE DEPARTMENT  
OFFICER BAUMGARTEN; BURBANK  
POLICE DEPARTMENT OFFICER  
EDWARDS; and DOES 1-100, inclusive

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR:

CIVIL RIGHTS VIOLATIONS  
PURSUANT TO 42 U.S.C. §§ 1983  
(First Cause of Action)

VIOLATION OF CALIFORNIA CIVIL  
CODE section 52.1  
(Second Cause of Action)

INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS  
(Third Cause of Action)

ASSAULT AND BATTERY  
(Fourth Cause of Action)

(Unlimited Jurisdiction: Damages Exceed  
\$25,000.00)

[Request For Jury Trial]

COMES NOW, Plaintiff Preston Smith and alleges as follows:

I. PRELIMINARY ALLEGATIONS

1. Plaintiff PRESTON SMITH ("Plaintiff" or "Smith") is, and at all times relevant to this

1 complaint was, an individual residing in the County of Los Angeles, State of California.

2       2. Plaintiff Smith is ignorant of the true full names and capacities of defendants sued  
3 herein as DOES 1-100, inclusive, and therefore sue these defendants by such fictitious names.  
4 Plaintiff is informed and believe and therefore alleges that each defendant designated herein as a  
5 DOE is legally responsible in some manner for the events and happenings herein referred to, and  
6 caused injury and damages proximately thereby to Plaintiff as herein alleged. Plaintiff will amend  
7 this complaint to allege their true names and capacities when ascertained.

8       3. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
9 concerned defendants, and each of them, were the agents, servants and employees of each of the  
10 other defendants, and each of them, and at all times herein alleged were acting within the course and  
11 scope of said agency and employment. All acts by defendants, and each of them, were ratified by  
12 each and every corporate defendant, jointly and severally.

13       4. The acts and circumstances hereinafter alleged occurred in the State of California,  
14 County of Los Angeles and CITY OF BURBANK.

15       5. Defendant CITY OF BURBANK is a public entity duly organized and existing under  
16 and by virtue of the laws of the State of California.

17       6. Plaintiff is informed and believes that Defendant BURBANK POLICE  
18 DEPARTMENT is a department and subdivision of Defendant CITY OF BURBANK.

19       7. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,  
20 BURBANK POLICE DEPARTMENT OFFICER GUNN (hereinafter DEFENDANT GUNN) was a  
21 resident of the County of Los Angeles and was a police officer with the City of BURBANK and/or  
22 the BURBANK . At all times relevant hereto, said defendant was acting within the course and scope  
23 of his employment as an officer in the City of BURBANK. At all times relevant herein, said  
24 defendant was acting under color of law, to wit, under the color of the statutes, ordinances,  
25 regulations, policies, customs, practices and usages of defendant City of BURBANK, its police  
26 department and/or the State of California.

27       8. At all times relevant herein, DEFENDANT GUNN was acting within the course and  
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1 scope of his employment as a police officer and employee of the BURBANK Police Department and  
2 defendant City of BURBANK, which is liable in respondeat superior for said employees' state-law  
3 torts pursuant to section 815.2 of the California Government Code.

4 9. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,  
5 BURBANK POLICE DEPARTMENT OFFICER BAUMGARTEN (hereinafter DEFENDANT  
6 BAUMGARTEN) was a resident of the County of Los Angeles and was a police officer in the City  
7 of BURBANK. At all times relevant hereto, said defendant was acting within the course and scope  
8 of his employment as an officer in the City of BURBANK. At all times relevant herein, said  
9 defendant was acting under color of law, to wit, under the color of the statutes, ordinances,  
10 regulations, policies, customs, practices and usages of defendant City of BURBANK, its police  
11 department and/or the State of California.

12 10. At all times relevant herein, DEFENDANT BAUMGARTEN was acting within the  
13 course and scope of his employment as a police officer and employee of the BURBANK Police  
14 Department and defendant City of BURBANK, which is liable in respondeat superior for said  
15 employees' state-law torts pursuant to section 815.2 of the California Government Code.

16 11. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,  
17 BURBANK POLICE DEPARTMENT OFFICER EDWARDS (hereinafter DEFENDANT  
18 EDWARDS) was a resident of the County of Los Angeles and was a police officer in the City of  
19 BURBANK. At all times relevant hereto, said defendant was acting within the course and scope of  
20 his employment as an officer in the City of BURBANK. At all times relevant herein, said defendant  
21 was acting under color of law, to wit, under the color of the statutes, ordinances, regulations,  
22 policies, customs, practices and usages of defendant City of BURBANK, its police department  
23 and/or the State of California.

24 12. At all times relevant herein, DEFENDANT EDWARDS was acting within the course  
25 and scope of his employment as a police officer and employee of the BURBANK Police Department  
26 and defendant City of BURBANK, which is liable in respondeat superior for said employees' state-  
27 law torts pursuant to section 815.2 of the California Government Code.

1           13. Plaintiff timely filed a claim for damages as required by California Government Code  
2 § 900 et seq. with the City of BURBANK on or about December 2, 2009. On March 24, 2010 the  
3 City of BURBANK provided notice of the denial of the Plaintiff's claim.

4           14. Venue is proper in this Court because all of the events alleged herein occurred within  
5 the County of Los Angeles, all defendants conduct operations within the County of Los Angeles, and  
6 all witnesses either work or live within the County of Los Angeles.

## 7                               II. FACTS COMMON TO ALL CAUSES OF ACTIONS

8           15. Plaintiff repeats and realleges each and every allegation and statement contained in  
9 paragraphs 1 through 14, inclusive, and incorporates the same herein with the same force and effect  
10 as though fully set forth herein.

11           16. On or about April 10, 2009 Plaintiff Smith and others were being questioned by  
12 certain Burbank police officers as they were walking in the vicinity of a liquor store in the City of  
13 Burbank.

14           17. After being questioned by the police officer, Plaintiff was "tasered" in his lower back  
15 by Defendant GUNN, causing Plaintiff to fall to the ground and become immobilized. While lying  
16 immobilized on the ground, face down, Plaintiff verbally surrendered and told Defendant GUNN  
17 "OK, you've got me." Plaintiff remained face down on the ground and did not attempt to move or  
18 stand up, at which time Defendant GUNN "tasered" him and second and third time, causing Plaintiff  
19 to have convulsions. Plaintiff, while still immobilized on the ground, reiterated an unequivocal  
20 surrender and told Defendant GUNN *"please don't shock me again sir, I'm not a bad person, I'm*  
21 *not a bad person."* Defendant GUNN was laughing hysterically at Plaintiff. Defendant GUNN then  
22 told Plaintiff *"fuck you, asshole, how do you like that. that will teach you to run"* at which time  
23 Defendant GUNN "tasered" Plaintiff a fourth time. Plaintiff sensed he could not breathe and thought  
24 he was going to die due to Defendant GUNN's actions. Plaintiff screamed for help, at which time  
25 Defendant GUNN proceeded to "taser" Plaintiff a fifth time, causing more extensive convulsions and  
26 leading Plaintiff to believe he was going to die by electrocution.

27           18. Following the fifth "taser" assault upon the Plaintiff, Plaintiff heard other police  
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1 officers approaching in close vicinity at which time one of the police officers shouted at Defendant  
 2 GUNN "why can't we hear you on your radio." Defendant GUNN proceeded to "taser" Plaintiff a  
 3 sixth time. Plaintiff started screaming "*he's killing me, he's killing me,*" at which time Defendant  
 4 BAUMGARTEN upon arriving at the scene shouted at Plaintiff to "*turn on your stomach and shut*  
 5 *the fuck up.*" Thereafter, Defendant BAUMGARTEN smashed his knees into the Plaintiff's back  
 6 and kidney area. Plaintiff thereafter felt Defendant BAUMGARTEN strike Plaintiff with a solid  
 7 object. Defendant GUNN then struck Plaintiff in the head with his flashlight, causing Plaintiff's  
 8 head to be split open and bleed profusely. As Plaintiff's head was jolted aside by the blow,  
 9 Defendant GUNN shouted to Plaintiff to "*shut the fuck up*" and proceeded to strike Plaintiff's head a  
 10 second time with his flashlight, splitting Plaintiff's head open in a second place. Thereafter a police  
 11 officer grabbed Plaintiff's right arm and twisted it violently causing ligament damage to Plaintiff's  
 12 arm. The police officers then placed handcuffs on Plaintiff so tightly that they cut-off the blood  
 13 circulation from his right wrist and thumb, while another officer remained on Plaintiff's back and  
 14 another held Plaintiff's head to the ground with his foot.

15 19. Plaintiff was thereafter taken by ambulance to St. Josephs Hospital in Burbank for  
 16 emergency medical treatment. While in the hospital Plaintiff overheard a Burbank Police  
 17 Department Sargeant instruct another Burbank Police Department officer to falsely state in his police  
 18 report that the police located cocaine inside of Plaintiff's vehicle.

### 19 III.

#### 20 FIRST CAUSE OF ACTION

#### 21 (FOR VIOLATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS

#### 22 PURSUANT TO 42 U.S.C. §1983)

23 20. PLAINTIFF repeats, realleges and incorporates each and every allegation of  
 24 paragraphs 1 through 14 in Section I and paragraphs 14 through 19 in Section II above as though  
 25 fully set forth herein.

26 21. This action is brought pursuant to 42 U.S.C. §1983 and the Fourth Amendment of the  
 27 United States Constitution.

1           22.     At all times relevant hereto, PLAINTIFF possessed the right, guaranteed by the  
2 Fourth Amendment of the United States Constitution, to be free from unreasonable searches,  
3 seizures, and uses of force by police officers acting under the color of law.

4           23.     As described above, Defendants GUNN, BAUMGARTEN and EDWARDS violated  
5 PLAINTIFF Smith's Fourth Amendment rights by unlawfully and unreasonably battering and  
6 torturing him and by "planting" cocaine in his vehicle and thereafter falsifying the police report(s) as  
7 they pertained to Plaintiff's arrest. In doing these things, said Defendants GUNN, BAUMGARTEN  
8 and EDWARDS acted specifically with the intent to deprive PLAINTIFF of his constitutional rights  
9 under the Fourth Amendment to be free from unreasonable use of force. Said Defendants GUNN,  
10 BAUMGARTEN and EDWARDS subjected PLAINTIFF to the aforementioned deprivations by  
11 either actual malice, deliberate indifference or a reckless disregard of his rights under the U.S.  
12 Constitution. Said Defendants GUNN, BAUMGARTEN and EDWARDS acted at all times herein  
13 knowing full well that the established practices, customs, procedures and policies of the BURBANK  
14 Police Department would allow a cover-up and allow the continued violation of the Fourth  
15 Amendment of the Constitution of the United States.

16           24.     On the date of PLAINTIFF having been subjected to battery by the Burbank Police  
17 Department officers as indicated above, Defendants GUNN, BAUMGARTEN and EDWARDS,  
18 acting within the course and scope of their duties as peace officers of the CITY OF BURBANK,  
19 depriving PLAINTIFF of his rights to be free from unreasonable use of force and torture as  
20 delineated herein above, and thereafter in violation of PLAINTIFFS' due process rights proceeded to  
21 illegally assault and batter PLAINTIFF, falsify evidence, submit false police reports and offer  
22 perjurious testimony so as to ensure that PLAINTIFF would be wrongfully charged.

23           25.     At the time of these constitutional violations by Defendants GUNN, BAUMGARTEN  
24 and EDWARDS, Defendant CITY OF BURBANK had in place, and had ratified customs and  
25 practices which permitted and encouraged their police officers to unjustifiably, unreasonably and in  
26 violation of the Fourth Amendment, to unlawfully arrest persons without probable cause, to commit  
27 random and wanton acts of violence against people with no legal justification, plant evidence, falsify  
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1 police reports and present perjured testimony to ensure the wrongful conviction of persons.

2       26. Said customs and practices also called for the Defendant CITY OF BURBANK and  
3 the BURBANK Police Department not to discipline, prosecute, or objectively and/or independently  
4 investigate or in any way deal with or respond to known incidents and complaints of unreasonable  
5 and illegal searches and beatings, false arrests, falsification of evidence, the preparation of false  
6 police reports to justify such wrongful conduct, and the giving of false testimony in trial to cover-up  
7 and conceal such wrongful conduct by officers of the BURBANK Police Department and its various  
8 Divisions, and for the Defendant CITY OF BURBANK to fail to objectively and/or independently  
9 investigate or in any way deal with or respond to or the related claims and lawsuits made as a result  
10 of such false arrests, illegal uses of force, and related misconduct.

11       27. Defendant CITY OF BURBANK was aware of and was deliberately indifferent to a  
12 pervasive and widespread pattern and practice with the BURBANK Police Department of concealing  
13 known instances of illegal, excessive and unreasonable use of force, falsified police reports, witness  
14 coercion, on-duty criminal acts and on-duty acts of moral turpitude. Said Defendant failed to take  
15 any reasonable measures to correct this pattern and practice and as a result said city and persons have  
16 been deliberately indifferent to the civil rights violations which resulted, including those which are  
17 described in the present claim.

18       28. Said customs and practices called for and led to the refusal of said Defendant CITY  
19 OF BURBANK to investigate complaints of previous incidents of illegal uses of excessive force, the  
20 filing of false police reports to conceal such misconduct, the falsification of evidence and perjury  
21 and, instead, officially claim that such incidents were justified and proper.

22       29. Said customs and practices called for said Defendant, by means of inaction and  
23 coverup, to encourage an atmosphere of lawlessness within the police department and to encourage  
24 their police officers to believe that excessive use of force against residents of BURBANK and of Los  
25 Angeles County or persons present therein, the submission of false police reports, and the  
26 commission of perjury was permissible and to believe that unlawful acts of falsification of evidence,  
27 excessive use of force, and perjury would be overlooked without discipline or other official  
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1 ramifications.

2 30. Said customs and practices of said Defendant CITY OF BURBANK evidenced a  
3 deliberate indifference to the violations of the constitutional rights of PLAINTIFF. This indifference  
4 was manifested by the failure to change, correct, revoke, or rescind said customs and practices in  
5 light of prior knowledge by said Defendant and its subordinate policy makers of indistinguishably  
6 similar incidents of unjustified and unreasonable and unlawful arrests, illegal and excessive uses of  
7 force, falsification of evidence, submission of false police reports and perjury.

8 31. Other systemic deficiencies of said Defendant CITY OF BURBANK which indicated,  
9 and continue to indicate, a deliberate indifference to the violations of the civil rights by the officers  
10 of the BURBANK Police Department include:

- 11 i. preparation of investigative reports designed to vindicate and/or justify false and  
12 unlawful searches and arrests;
- 13 ii. preparation of investigative reports which uncritically rely solely on the word of  
14 officers involved in unlawful arrests or in the planting of evidence and which  
15 systematically fail to credit testimony by non-officer witnesses;
- 16 iii. preparation of investigative reports which omit factual information and physical  
17 evidence which contradicts the accounts of the officers involved;
- 18 iv. issuance of public statements exonerating officers involved in such incidents prior to  
19 the completion of investigations of wrongful arrests.
- 20 v. failure to maintain centralized department-wide system for the tracking and  
21 monitoring tort claims and lawsuits alleging illegal searches, false arrests,  
22 planting of evidence, perjury, abuse of authority, illegal and unjustified uses of  
23 excessive force, and race-based misconduct by individual officers so as to  
24 identify those officers who engage in a pattern of abuse of police authority and  
25 police misconduct.

26 32. Said Defendant CITY OF BURBANK also maintained a system of grossly inadequate  
27 training pertaining to the lawful making of arrests, police ethics, the law pertaining to searches and  
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1 seizures, testifying in trial and perjury, the use of force, the collection of evidence, and the  
2 preparation of police reports.

3 33. The foregoing acts, omissions, and systemic deficiencies are customs and practices of  
4 said defendant and such caused, permitted and/or allowed under official sanction Defendants GUNN,  
5 BAUMGARTEN and EDWARDS to be unaware of, or intentionally overlook and ignore, the rules  
6 and laws governing the laws and requirements for arrests as well as the use of force. The foregoing  
7 acts, omissions, and systemic deficiencies are customs and practices of said Defendant and such  
8 caused, permitted and/or allowed under official sanction said Defendants GUNN, BAUMGARTEN  
9 and EDWARDS to believe that searches and arrests are entirely within the discretion of the officer  
10 and that improper and unlawful searches and arrests, filing of false and misleading police reports,  
11 and the commission of perjury, as well as the use of excessive force, would not be objectively,  
12 thoroughly and/or properly investigated, all with the foreseeable result that Defendant's officers  
13 would make false and unlawful searches and arrests, and falsify evidence, submit false and  
14 misleading police reports, and commit perjury, employ excessive force, and thereby violate the civil  
15 rights of the citizens of this state with whom said officers would come into contact with.

16 34. As a result of the aforementioned acts, omissions, systematic deficiencies, customs  
17 and practices, Defendants GUNN, BAUMGARTEN and EDWARDS unlawfully utilized excessive  
18 force and torture upon PLAINTIFF, and developed and implemented a plan to unlawfully secure  
19 prosecution, conviction and imprisonment through the offering of false and misleading police reports  
20 and the presentation of falsified evidence and perjurious testimony.

21 35. As a direct and proximate result of the aforementioned acts of said Defendants,  
22 PLAINTIFF suffered the violation of his constitutional rights as described above. As the further  
23 actual and proximate result of the acts and omissions of said defendants, as described herein,  
24 PLAINTIFF was made to suffer and sustain severe physical injury and continues to suffer, severe  
25 emotional and psychological pain, suffering, anxiety, depression, anguish, shock, and fear and loss of  
26 income.

27 36. The aforementioned acts of said Defendants were willful, wanton, malicious and  
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1 oppressive thereby justifying the awarding of exemplary and punitive damages as to said Defendants.

2 **IV.**

3 **SECOND CAUSE OF ACTION**

4 **(VIOLATION OF CALIFORNIA CIVIL CODE § 52.1**

5 **( As To Police Officer Defendants GUNN, BAUMGARTEN and EDWARDS)**

6 37. PLAINTIFF repeats, realleges and incorporates each and every allegation of  
7 paragraphs 1 through 36 above as though fully set forth herein.

8 38. When Defendants, and each of them, engaged in the conduct described above, they  
9 violated Plaintiff's civil rights under California's civil rights laws.

10 39. Defendants engaged in the conduct described above in an unnecessary and  
11 unreasonable manner. A reasonable police officer upon approaching Plaintiff as set forth above  
12 would not have engaged in the above described conduct and would not have effectuated the battery  
13 and torture of Plaintiff Smith.

14 40. Defendants acted unreasonably, without provocation, and with malice. The detention  
15 and intimidation, with deliberate acts of battery, electronic torture against Plaintiff Smith constituted  
16 specific threats and coercive actionable conduct by Defendants against him. The actions of  
17 Defendants GUNN, BAUMGARTEN and EDWARDS, made under color of law, were intended to  
18 and did wrongfully intimidate and injure Plaintiff Smith and caused him to be placed in fear for his  
19 personal safety.

20 41. The aforementioned acts of said Defendants were willful, wanton, malicious and  
21 oppressive thereby justifying the awarding of exemplary and punitive damages as to said Defendants.

22 **V.**

23 **THIRD CAUSE OF ACTION**

24 **(BY PLAINTIFF Smith FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
25 **AGAINST POLICE OFFICER DEFENDANTS GUNN, BAUMGARTEN and EDWARDS)**

26 42. PLAINTIFF repeats, realleges and incorporates each and every allegation of  
27 paragraphs 1 through 41 above as though fully set forth herein.



1           43. Defendants GUNN, BAUMGARTEN and EDWARDS had a duty and obligation to  
2 perform their employment, conform their conduct, and execute laws and regulations in a lawful and  
3 reasonable manner.

4           44. Defendants GUNN, BAUMGARTEN and EDWARDS, by engaging in the conduct  
5 hereinabove alleged, including the battery and electronic torture committed upon Plaintiff Smith,  
6 intended to cause Plaintiff Smith severe emotional distress. Defendants' conduct as hereinabove  
7 alleged against Plaintiff Smith was extreme and outrageous conduct.

8           45. Defendants GUNN, BAUMGARTEN and EDWARDS knew, or should have known  
9 with a substantial certainty that their conduct in the above INCIDENT would subject Plaintiff Smith  
10 to severe emotional distress and would seriously and substantially harm Plaintiff Smith. Defendants  
11 GUNN, BAUMGARTEN and EDWARDS knew that they had power and control over Plaintiff  
12 Smith, and they perpetrated the acts described in this complaint with the intent to inflict such harm  
13 and severe emotional distress upon Plaintiff Smith and or acted in perpetrating the heinous,  
14 retaliatory, and indecent acts described herein, with the knowledge that such harm and severe  
15 emotional distress was substantially certain to befall Plaintiff Smith as a result, or with reckless  
16 disregard for the substantial certainty that such harm would befall Plaintiff Smith.

17           46. The conduct perpetrated by Defendants GUNN, BAUMGARTEN and EDWARDS  
18 was and is a perpetrated malicious design and intent to harm and inflict pain and suffering and  
19 extreme emotional and mental distress on Plaintiff Smith.

20           47. As a direct result of Defendants actions, Plaintiff Smith suffered and continues to  
21 suffer from severe emotional distress, physical injury and loss of income.

22           48. The aforementioned acts of said Defendants were willful, wanton, malicious and  
23 oppressive thereby justifying the awarding of exemplary and punitive damages as to said Defendants.

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VI.

**FOURTH CAUSE OF ACTION**

**(BY PLAINTIFF Smith FOR ASSAULT AND BATTERY AGAINST  
AGAINST POLICE OFFICER DEFENDANTS GUNN,  
BAUMGARTEN and EDWARDS)**

49. PLAINTIFF repeats, realleges and incorporates each and every allegation of paragraphs 1 through 48 above as though fully set forth herein.

50. Defendants GUNN, BAUMGARTEN and EDWARDS had a duty and obligation to perform their employment, conform their conduct and execute laws and regulations in a lawful and reasonable manner.

51. Defendants GUNN, BAUMGARTEN and EDWARDS while engaging in the conduct hereinabove alleged, including the including the assault and battery and electronic torture committed upon Plaintiff Smith, deliberately assaulted and battered Plaintiff Smith without his consent.

52. Such actions of assault and battery and electronic torture upon Plaintiff Smith was without his consent and, as a direct result of Defendants' actions, Plaintiff Smith suffered physical and emotional injuries and continues to suffer from severe emotional distress.

53. The aforementioned acts of said Defendants were willful, wanton, malicious and oppressive thereby justifying the awarding of exemplary and punitive damages as to said Defendants.

**PRAYER**

**WHEREFORE,** Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. General damages in an amount according to proof;
2. Special damages in an amount according to proof;
3. Exemplary and punitive damages in an amount according to proof as to the First, Second, Third, Fourth causes of action;
4. Interest as allowed by law;
5. Plaintiffs' costs of suit incurred herein;

- 1        6.     Attorney's fees as allowed by code, and;
- 2        7.     Such other and further relief a may be just and proper.
- 3

4     Date: September 21, 2010

LAW OFFICES OF MANUEL H. MILLER  
A Professional Corporation

5  
6     By  \_\_\_\_\_

7            MAX A. SAULER, Esq.  
8            Attorney for Plaintiff  
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## NOTICE SENT TO:

Miller, Manuel H.  
Law Offices of Manuel H. Miller  
20750 Ventura Blvd., Suite 440  
Woodland Hills CA 91364

**ORIGINAL FILED**  
FILE STAMP  
SEP 27 2010  
LOS ANGELES  
SUPERIOR COURT

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PRESTON SMITH

Plaintiff(s),

VS.

CITY OF BURBANK ET AL

Defendant(s).

CASE NUMBER

BC446016

NOTICE OF CASE  
MANAGEMENT CONFERENCE

CITY ATTORNEY  
2010 OCT 13 PM 1:15

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for December 27, 2010 at 8:30 am in Dept. 49, *cal*  
at 111 North Hill Street, Los Angeles, California 90012.

**NOTICE TO DEFENDANT: THE SETTING OF THE CASE MANAGEMENT CONFERENCE DOES NOT EXEMPT THE DEFENDANT FROM FILING A RESPONSIVE PLEADING AS REQUIRED BY LAW.**

Pursuant to California Rules of Court, rules 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, section 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.360 and 583.410, Government Code Section 68608 (b), and California Rules of Court 2.2 et seq.

Date: September 27, 2010**CONRAD RICHARD ARAGON**

Judicial Officer

**CERTIFICATE OF SERVICE**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

☒ by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

☐ by personally giving the party notice upon filing the complaint.

Date: September 27, 2010

John A. Clarke, Executive Officer/Clerk

by MARISOL LOMELI, Deputy Clerk

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534	Hon. Holly B. Kendig	42	416
Hon. J. Stephen Czuleger	3	224	Hon. Mel Rod Recana	45	529
Hon. Luis A. Lavini	13	630	Hon. Debra Katz Weintraub	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
Hon. Richard Fruin	15	307	Hon. Conrad Aragon	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Rex Hoeseaman	19	311	Hon. Susan Bryant-Desson	52	510
Hon. Kevin C. Brazile	20	310	Hon. John P. Shook	53	513
Hon. Zaven V. Sinanian	23	315	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Jane L. Johnson	56	514
Hon. James R. Dunn	26	316	Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palzuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. John A. Kronstadt	30	400	Hon. David L. Minning	61	632
Hon. Alan S. Rosenfield	31	407	Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Kenneth R. Freeman	64	601
Hon. Charles F. Palmer	33	409	Hon. Mark Mooney	68	617
Hon. Amy D. Hogue	34	408	Hon. Ramona See	69	621
Hon. Daniel Backley	35	411	Hon. Soussan G. Braguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwin	72	731
Hon. Joanne O'Donnell	37	413	Hon. Terest Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Feley	78	730
Hon. Michael C. Solner	39	415	<b>Hon. Emilie H. Elias*</b>	<b>324</b>	<b>CCW</b>
Hon. Michelle R. Rosenblatt	40	414	Other		
Hon. Ronald M. Sahagian	41	417			

**\*Class Actions**

All class actions are initially assigned to Judge Emilie H. Elias in Department 324 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90065). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.408. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk  
 By \_\_\_\_\_, Deputy Clerk



The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

### **APPLICATION**

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

### **PRIORITY OVER OTHER RULES**

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

### **CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

### **TIME STANDARDS**

Cases assigned to the Individual Calendarizing Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

### **FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

### **SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

**What is ADR:**

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

**Mediation:**

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**Cases for Which Mediation May Be Appropriate**

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

**Cases for Which Mediation May Not Be Appropriate**

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

**Arbitration:**

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

**Cases for Which Arbitration May Be Appropriate**

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

**Cases for Which Arbitration May Not Be Appropriate**

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

**Neutral Evaluation:**

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

**Cases for Which Neutral Evaluation May Be Appropriate**

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

**Cases for Which Neutral Evaluation May Not Be Appropriate**

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

**Settlement Conferences:**

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.



**LOS ANGELES SUPERIOR COURT ADR PROGRAMS****CIVIL:**

- Civil Action Mediation (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.865 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- Retired Judge Settlement Conference
- Neutral Evaluation (Governed by Los Angeles Superior Court Rules, chapter 12.)
- Judicial Arbitration (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- Eminent Domain Mediation (Governed by Code of Civil Procedure section 1250.420.)
- Civil Harassment Mediation
- Small Claims Mediation

**FAMILY LAW (non-custody):**

- Mediation
- Forensic Certified Public Accountant (CPA) Settlement Conference
- Settlement Conference
- Nonbinding Arbitration (Governed by Family Code section 2554.)

**PROBATE:**

- Mediation
- Settlement Conference

**NEUTRAL SELECTION**

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

**COURT ADR PANELS**

- Party Select Panel** The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Random Select Panel** The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select Panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

**ADR ASSISTANCE**

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

Antoniovich	4201 1 4th St. West	None	Landcaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Panfield Ave.	1200	Chatsworth, CA 91311	(818)576-8666	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)633-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91205	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	318	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)897-7243	(562)492-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)556-6665	(626)668-1774
Pomona	400 Civic Center Plaza	108	Pomona, CA 91768	(909)620-3163	(909)629-6283
San Pedro	505 S. Centre	269	San Pedro, CA 90731	(310)519-5151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1629	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-6425	(213)633-6115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7328
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program

A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office



- DO NOT FILE WITH THE COURT -

CIV-050

- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Max A. Sauler, Esq. (SBN 62634) Manuel H. Miller, Esq. (SBN 36947) LAW OFFICES OF MANUEL H. MILLER 20750 Ventura Blvd, Suite 440 Woodland Hills, CA 91364 ATTORNEY FOR (name): Plaintiff		TELEPHONE NO.: (818) 710-9993	FOR COURT USE ONLY <b>CITY ATTORNEY</b> 2010 OCT 19 PM 1:15
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District			
PLAINTIFF: Preston Smith DEFENDANT: City of Burbank, et al.			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		CASE NUMBER: BC446016	

To (name of one defendant only): CITY OF BURBANK

Plaintiff (name of one plaintiff only): PRESTON SMITH

seeks damages in the above-entitled action, as follows:

- |   | AMOUNT       |
|---|--------------|
| 1. General damages  |              |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience .....   | \$ 1,500,000 |
| b. <input checked="" type="checkbox"/> Emotional distress .....   | \$ 1,500,000 |
| c. <input type="checkbox"/> Loss of consortium .....  | \$           |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) .....   | \$           |
| e. <input type="checkbox"/> Other (specify) .....   | \$           |
| f. <input type="checkbox"/> Other (specify) .....   | \$           |
| g. <input type="checkbox"/> Continued on Attachment 1.g.  |              |
| 2. Special damages  |              |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) .....   | \$ 10,000    |
| b. <input type="checkbox"/> Future medical expenses (present value) .....   | \$           |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) .....   | \$ 100,000   |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) .....  | \$ 25,000    |
| e. <input type="checkbox"/> Property damage .....   | \$           |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) .....  | \$           |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) .....  | \$           |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) .....  | \$           |
| i. <input type="checkbox"/> Other (specify) .....   | \$           |
| j. <input type="checkbox"/> Other (specify) .....   | \$           |
| k. <input type="checkbox"/> Continued on Attachment 2.k.  |              |
| 3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify). \$ 2,500,000 when pursuing a judgment in the suit filed against you. |              |
| Date: October 14, 2010  |              |

Max A. Sauler, Esq. (SBN 62634)

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

STATEMENT OF DAMAGES  
(Personal Injury or Wrongful Death)Legal  
Solutions  
& Plus

Page 1 of 2

Code of Civil Procedure, §§ 425.11, 425.115

PLAINTIFF: Preston Smith	CASE NUMBER: BC446016
DEFENDANT: City of Burbank, et al.	

**PROOF OF SERVICE**

(After having the other party served as described below, with any of the documents identified in item 1, have the person who served the documents complete this Proof of Service. Plaintiff cannot serve these papers.)

## 1. I served the

a. ☐ Statement of Damages ☐ Other (specify):

b. on (name):

c. by serving ☐ defendant ☐ other (name and title or relationship to person served):d. ☐ by delivery ☐ at home ☐ at business

(1) date:

(2) time:

(3) address:

e. ☐ by mailing

(1) date:

(2) place:

## 2. Manner of service (check proper box)

a. ☐ Personal service. By personally delivering copies. (CCP § 415.10)b. ☐ Substituted service on corporation, unincorporated association (including partnership), or public entity. By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(a))c. ☐ Substituted service on natural person, minor, conservatee, or candidate. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)d. ☐ Mail and acknowledgment service. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP § 415.30) (Attach completed acknowledgment of receipt.)e. ☐ Certified or registered mail service. By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP § 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)f. ☐ Other (specify code section):☐ additional page is attached.

3. At the time of service I was at least 18 years of age and not a party to this action.

4. Fee for service: \$

## 5. Person serving:

- a. ☐ California sheriff, marshal, or constable  
b. ☐ Registered California process server  
c. ☐ Employee or independent contractor of a registered California process server  
d. ☐ Not a registered California process server  
e. ☐ Exempt from registration under Bus. & Prof. Code § 22350(b)

f. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)  
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)



Max A. Sauler, Esq., SBN62634 Manuel H. Miller, Esq., SBN 36947 LAW OFFICES OF MANUEL H. MILLER 20750 Ventura Blvd. Suite 440 Woodland Hills, California 91364 TELEPHONE NO.: (818) 710-9993 FAX NO.: 818-710-1938		<b>CITY ATTORNEY</b> 2010 OCT 19 PM 1:16		<b>CONFIRMED COPY</b> OF ORIGINAL FILED Superior Court of California Central District - Los Angeles <b>SEP 22 2010</b> John A. Clarke, Executive Officer/Clerk By <u>RUGENALOPAZ</u> Deputy	
ATTORNEY FOR (Name): <u>Plaintiff</u>					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 No. Hill Street MAILING ADDRESS: 111 No. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District					
CASE NAME: SMITH V. CITY OF BURBANK					
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)			<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		
<input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			CASE NUMBER: <b>BC446016</b> JUDGE: DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) <b>Non-PIP/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): FOUR

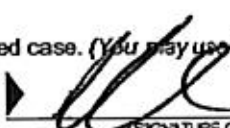
5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 09/21/2010

Max A. Sauler, Esq., SBN62634

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

#### CASE TYPES AND EXAMPLES

##### Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

##### Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/DPDWD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/DPDWD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/DPDWD

##### Non-P/DPDWD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-P/DPDWD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

##### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

##### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

##### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

##### Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

##### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

##### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

##### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

##### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition



# CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

## Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration:

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 2, 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1, 2, 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 2, 3, 4, 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 2, 4. 1, 2, 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 2, 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 2, 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1, 2, 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1, 2, 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3.
	Civil Rights (08)	<input checked="" type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3.

SHORT TITLE: SMITH V. 'CITY OF BURBANK		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (08) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.



SHORT TITLE: SMITH V. CITY OF BURBANK

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)  Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
	<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
	<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Provisionally Complex Litigation	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
	<input type="checkbox"/> A6006 Claims Involving Mass Tort (40)	1., 2., 8.
	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	<input type="checkbox"/> A6036 Toxic Tort/Environmental (30)	1., 2., 3., 8.
	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
	<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
	<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
	<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Miscellaneous Civil Complaints	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
	<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Miscellaneous Civil Petitions	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
	<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
	<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	<input type="checkbox"/> A6190 Election Contest	2.
	<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
	<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

SHORT TITLE: SMITH V. CITY OF BURBANK	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE			ADDRESS:
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			275 E. Olive Street
CITY:	STATE:	ZIP CODE:	
Burbank	CA	91510	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Main courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 09/21/2010



(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.



# SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE  
(AVISO AL DEMANDADO): DEPARTMENT; BURBANK POLICE  
DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT  
OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER  
EDWARDS; AND DOES 1-100, INCLUSIVE**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 22 2010

John A. Clarke, Executive Officer/Clerk  
By RUGENA LOPEZ Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

2010 OCT 10  
CITY CLERK

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012  
Central District

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Max A. Sauler, Esq., SBN 62634  
LAW OFFICES OF MANUEL H. MILLER  
20750 Ventura Blvd. Suite 440  
Woodland Hills, California 91364

DATE:

(Fecha)

SEP 22 2010

Clerk, by

(Secretary)

JOHNA CLARKE, Clerk

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)  
(Para prueba de entrega de esta citación use el formulario de Prueba de Servicio de Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): CITY OF BURBANK  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☒ by personal delivery on (date): 10/18/10

[SEAL]

10 OCT 18 PM 2:33  
CITY CLERK  
CITY OF BURBANK  
RECEIVED  
RUGENA LOPEZ  
Deputy  
(Adjunto)



**SU MONS**  
**(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE**  
**(AVISO AL DEMANDADO): DEPARTMENT; BURBANK POLICE**  
**DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT**  
**OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER**  
**EDWARDS; AND DOES 1-100, INCLUSIVE**

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**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 22 2010

John A. Clarke, Esq. / Deputy Clerk  
By RUGENA LOPEZ Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012  
Central District

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Max A. Sauler, Esq., SBN 62634  
LAW OFFICES OF MANUEL H. MILLER  
20750 Ventura Blvd. Suite 440  
Woodland Hills, California 91364

DATE:

(Fecha)

SEP 22 2010

Clerk, by

(Secretario)

CASE NUMBER:  
Número del Caso **BC446016**

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)

(Para prueba de entrega de esta citación use el formulario de Prueba de Servicio de Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Burbank Police Dept

- under:
- |  |   |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 418.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 418.70 (conservator)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 418.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

- ☒ by personal delivery on (date): 10/18/10

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. July 1, 2009)

**SUMMONS**

Legal  
Solutions  
& Plus

Page 1 of 1  
Code of Civil Procedure §§ 412.20, 495

Rcvd 10-18-10 1430 hrs CRG

**RUGENA LOPEZ**  
Deputy  
CITY ATTORNEY  
2010 OCT 18 PM 3:00



**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE**  
**(AVISO AL DEMANDADO): DEPARTMENT; BURBANK POLICE**  
**DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT**  
**OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER**  
**EDWARDS; AND DOES 1-100, INCLUSIVE**

**CONFORMED COPY**OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 22 2010

Jolinda A. Clarke, Executive Officer/Clerk

By RUGENA LOPEZ Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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The name and address of the court is:  
 (El nombre y dirección de la corte es):

Los Angeles Superior Court  
 111 No. Hill Street  
 Los Angeles, CA 90012  
 Central District

CASE NUMBER:  
(Número del Caso)

BC 446016

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Max A. Sauler, Esq., SBN 62634 (818) 710-9993 818-710-1938  
 LAW OFFICES OF MANUEL H. MILLER  
 20750 Ventura Blvd. Suite 440  
 Woodland Hills, California 91364

DATE:

(Fecha)

SEP 22 2010

Clerk, by

(Secretario)

RUGENA LOPEZ

Deputy

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)

(Para prueba de entrega de esta citación use el formulario de Prueba de Servicio de Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

(SEAL)



**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE  
(AVISO AL DEMANDADO): DEPARTMENT; BURBANK POLICE  
DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT  
OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER  
EDWARDS; AND DOES 1-100, INCLUSIVE**

**CONFORMED COPY**

OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 22 2010

John A. Clarke, Deputy Clerk  
By RUGENA LOPEZ Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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The name and address of the court is:  
(El nombre y dirección de la corte es):

Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012  
Central District

CASE NUMBER: **BC446016**  
Número del Caso

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Max A. Sauler, Esq., SBN 62634  
LAW OFFICES OF MANUEL H. MILLER  
20750 Ventura Blvd. Suite 440  
Woodland Hills, California 91364

(818) 710-9993 818-710-1938

DATE:

(Fecha)

SEP 22 2010

Clerk, by

(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)

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**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

(SEAL)

RUGENA LOPEZ  
Deputy Clerk  
2010 OCT 26 AM 10:54  
ATTORNEY



**SUMMONS**  
(CITACION JUDICIAL)

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE (AVISO AL DEMANDADO):** DEPARTMENT; BURBANK POLICE DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER EDWARDS; AND DOES 1-100, INCLUSIVE

**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

**SEP 22 2010**

John A. Clarke, Executive Officer/Clerk  
By RUGENA LOFF Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH (LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012  
Central District

CASE NUMBER: **BC446016**  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Max A. Sauler, Esq., SBN 62634 (818) 710-9993 818-710-1938  
LAW OFFICES OF MANUEL H. MILLER  
20750 Ventura Blvd. Suite 440  
Woodland Hills, California 91364

DATE:

(Fecha) **SEP 22 2010**

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons, (POS-010).)

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**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

(SEAL)

**RUGENA LOFF**  
Deputy  
(Adjunto)

2010 OCT 26 AM 10:05

CITY ATTORNEY



# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: CITY OF BURBANK; BURBANK POLICE  
(AVISO AL DEMANDADO): DEPARTMENT; BURBANK POLICE  
DEPARTMENT OFFICER GUNN; BURBANK POLICE DEPARTMENT  
OFFICER BAUMGARTEN; BURBANK POLICE DEPARTMENT OFFICER  
EDWARDS; AND DOES 1-100, INCLUSIVE**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 22 2010

John A. Clarke, Executive Officer/Clerk  
By RUGENA LOPEZ Deputy

**YOU ARE BEING SUED BY PLAINTIFF: PRESTON SMITH  
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(El nombre y dirección de la corte es):

Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012  
Central District

CASE NUMBER:  
Número del Caso **BC446016**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Max A. Sauler, Esq., SBN 62634 (818) 710-9993 818-710-1938  
LAW OFFICES OF MANUEL H. MILLER  
20750 Ventura Blvd. Suite 440  
Woodland Hills, California 91364

DATE:

(Fecha)

SEP 22 2010

Clerk, by

(Secretario)

**RUGENA LOPEZ**  
Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)

(Para prueba de entrega de esta citación use el formulario de Prueba de Servicio de Summons, (POS-010)).

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1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☒ by personal delivery on (date): 10/28/10



**PROOF OF SERVICE**

F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), Notice of Removal by method indicated below, on the party in this action:

Manuel H. Miller  
Max. A. Sauler  
Law Offices of Manuel H. Miller, APC  
20750 Ventura Blvd., Suite 440  
Woodland Hills, CA 91364

Dennis M. Gonzales  
Lawrence Beach Allen & Choi, PC  
100 West Broadway, Suite 1200  
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

By placing ☐ the original / ☒ a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed as per the attached service list, for collection and mailings at the City of Burbank in Burbank, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

☐ **BY ELECTRONIC SERVICE  
(via electronic filing service provider)**

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at [www.fileandserve.lexisnexis.com](http://www.fileandserve.lexisnexis.com) pursuant to the Court's Order mandating electronic service. See Cal.R.C.L.R. 2053, 2055, 2060. The transmission was reported as complete and without error.

☐ **BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as per the above service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to received documents.

☐ **BY ELECTRONIC SERVICE  
(to individual person)**

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

☐ **BY PERSONAL SERVICE**

☐ By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.  
☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

☐ **BY FACSIMILE**

By transmitting the document(s) listed above from City of Burbank-City Attorney's Office in Burbank, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

☐ **STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan  
Type or Print Name

  
Signature

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Valerie Baker Fairbank and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

**CV10- 8840 VBF (AGR~~x~~)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Preston Smith

(b) County of Residence of First Listed Plaintiff Los Angeles  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (First Name, Address, and Telephone Number)

Manuel H. Miller, Law Offices of Manuel H. Miller, 20750 Ventura Blvd., Suite 440, Woodland Hills, CA 91364

## DEFENDANTS

City of Burbank, Burbank Police Department, Burbank Police Department Officer Gunn; Burbank Police Department Officer

County of Residence of First Listed Defendant Los Angeles  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Carol A. Humiston, Senior Assistant City Attorney, 275 E. Olive Avenue, Burbank, CA 91510

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY - Mod. Malpractice</b> <input type="checkbox"/> 362 Personal Injury - Mod. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Expt. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13756) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. section 1983

Brief description of cause:  
Civil Rights violation, assault and battery

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

CV10-8840

DATE

11/17/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

III(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. VENUE: (When completing the following information, use an additional sheet if necessary.)

- a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
- ☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
- ☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
- Note: In land condemnation cases, use the location of the tract of land involved.

County in this District*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_ Date \_\_\_\_\_

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935ff(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))



**PROOF OF SERVICE**

F.R.C.P. 5 / C.C.P. 1013a(3) Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On November 17, 2010, I served the following listed document(s), Civil Cover Sheet by method indicated below, on the party in this action:

Manuel H. Miller  
Max. A. Sauler  
Law Offices of Manuel H. Miller, APC  
20750 Ventura Blvd., Suite 440  
Woodland Hills, CA 91364

Dennis M. Gonzales  
Lawrence Beach Allen & Choi, PC  
100 West Broadway, Suite 1200  
Glendale, California 91210-1219

☒ **BY U.S. MAIL**

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☐ **BY ELECTRONIC SERVICE  
(via electronic filing service provider)**

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☐ **BY OVERNIGHT DELIVERY**

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☐ **BY ELECTRONIC SERVICE  
(to individual person)**

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☐ **BY FACSIMILE**

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☐ **STATE**


I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed November 17, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan  
Type or Print Name

  
Signature